Alberta Community and Occupational Health
Occupational Health and Safety Division

Public Review Document

Proposed Alberta Regulation Respecting the Implementation of the Workplace Hazardous Materials Information System (WHMIS)

(October 19, 1987)

Supplementary Notes

The PROPOSED ALBERTA REGULATION respecting the implementation of WHMIS provides for:

- the presence of labels and material safety data sheets for controlled products at workplaces,
- worker education regarding controlled products,
- employer trade secrets, and
- disclosure of and protection of confidential information.

This PROPOSED ALBERTA REGULATION references the federal WHMIS legislation. Summary highlights of the federal WHMIS legislation follow:

Bill C-70, the statute to implement federal aspects of WHMIS received Royal Assent on June 30, 1987. It amended the Hazardous Products Act and established the Hazardous Materials Information Review Act.

(a) Hazardous Products Act

- enabling legislation regarding supplier and importer responsibilities.
- requires, as a condition of sale or import, that controlled products be labelled and accompanied by a material safety data sheet (MSDS).

(b) Hazardous Materials Information Review Act

- enabling legislation regarding confidential business information.
- authorizes claims for exemption from disclosure of information which is considered to be a trade secret.
- establishes the Hazardous Materials Information Review Commission to rule on the validity of trade secret claims and to facilitate appeals of Commission decisions by affected parties.

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(c) (Draft) Controlled Products Regulation

- established under the authority of the Hazardous Products Act.
- specifies criteria for the identification and classification of controlled products.
- prescribes conditions of exemption from the requirements of the Hazardous Products Act regarding labels and MSDSs.

(d) (Draft) Hazardous Materials Information Review Regulations

- established under the authority of the Hazardous Materials Information Review Act.
- establishes criteria for determining the validity of trade secret claims.

Please note that for the purpose of the proposed Alberta regulation, "supplier" has the meaning specified in Section 11 of the Hazardous Products Act:

> "supplier" means a person who is a manufacturer, processor, or packager of a controlled product or a person who, in the course of business, imports or sells controlled products.

PROPOSED ALBERTA REGULATION RESPECTING THE IMPLEMENTATION OF THE WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)

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INTERPRETATION

1 In this regulation,

(a) "Act" means the Occupational Health and Safety Act, RSA 1980, c.O-2,

(b) "bulk shipment" means a shipment of a controlled product that is contained without intermediate containment or intermediate packaging in

(i) a vessel with a water capacity of more than 454 litres;

(ii) a freight container, a road vehicle, a railway vehicle, a portable tank, a freight container carried on a road vehicle, a railway vehicle, ship or aircraft or a portable tank carried on a road vehicle, a railway vehicle, ship, or aircraft;

(iii) the hold of a ship; or

(iv) a pipeline;

(c) "Commission" means the Hazardous Materials Information Review Commission established by subsection 28(1) of the Hazardous Materials Information Review Act, S.C.-1987, c. 30 (part III),

(d) "container" includes a bag, barrel, bottle, box, can, cylinder, drum, storage tank or similar package or receptacle,

(e) "controlled product" means any product, material or substance specified by the regulations made pursuant to paragraph 15(1)(a), Hazardous Products Act to be included in any of the classes listed in Schedule II of that Act,

(f) "Controlled Products Regulations" means the Controlled Products Regulations made pursuant to the Hazardous Products Act,

(g) "fugitive emission" means a gas, liquid, solid, vapour, fume, mist, fog or dust that escapes from process equipment or from emission control equipment or from a product,

(h) "hazard information" means information on the proper and safe use, storage and handling of a controlled product and includes information relating to its toxicological properties,

(i) "Hazardous Materials Information Review Act" means the Hazardous Materials Information Review Act, S.C.-1987, c. 30 (part III),

(j) "Hazardous Materials Information Review Regulations" means Hazardous Materials Information Review Regulations made pursuant to the Hazardous Materials Information Review Act, S.C.-1987, c. 30 (part III),

(k) "Hazardous Products Act" means the Hazardous Products Act, R.S.C, c.H-3,

(l) "hazardous waste" means a controlled product that is intended for disposal or is sold for recycling or recovery,

(m) "label" includes any mark, sign, device, stamp, seal, sticker, ticket, tag or wrapper,

(n) "manufactured article" means any article that is formed to a specific shape or design during manufacture, the intended use of which when in that form is dependent in whole or in part on its shape or design, and that, under normal conditions of use, will not release or otherwise cause a person to be exposed to a controlled product,

(o) "medical professional" means a person who is

(i) entitled to practice medicine; or

(ii) registered as a registered nurse under the laws of the province in which the person is carrying on his or her profession;

(p) "material safety data sheet" means a document meeting the requirements of the Controlled Product Regulations for a material safety data sheet,

(q) "product identifier" means, in respect of a controlled product, the brand name, code name or code number specified by a supplier or the chemical name, common name, generic name or trade name of a controlled product,

(r) "readily available" means present in an appropriate place at the work site in a physical copy form that can be handled,

(s) "risk phrase" means, in respect of a controlled product or a class or division of controlled products, a statement identifying a hazard which may arise from the intended use of or exposure to the controlled product or the class or division of controlled products,

(t) "supplier label" means a label provided by a supplier disclosing the information and displaying the hazard symbols referred to in paragraph 13(b) of the Hazardous Products Act,

(u) "supplier material safety data sheet" means a material safety data sheet provided by a supplier disclosing the information referred to in subparagraphs 13 (a)(i) to (v) of the Hazardous Products Act,

(v) "work site label" means a label meeting the requirements of subsection 7(1) of this regulation.

APPLICATION

2 (1) This regulation applies to employers and workers in respect of controlled products used, stored and handled at a work site.

(2) Notwithstanding subsection (1), the provisions of this regulation in respect of a supplier label and a supplier material safety data sheet do not apply where the controlled product is any:

(a) explosive within the meaning of the Explosives Act, R.S.C. 1970, c. E-15,

(b) cosmetic, device, drug or food within the meaning of the Food and Drug Act, R.S.C. 1970, c. F-27,

(c) control product within the meaning of the Pest Control Products Act, R.S.C. 1970, c. P-10,

(d) prescribed substance within the meaning of the Atomic Energy Control Act, R.S.C. 1970, c. A-19, or

(e) product, material or substance included in part II of schedule I of the Hazardous Products Act and packaged as a consumer product.

(3) Notwithstanding subsection (1), this regulation does not apply where the controlled product is:

(a) wood or a product made of wood,

(b) tobacco or a product made of tobacco, or

(c) a manufactured article.

(4) Notwithstanding subsection (1), this regulation does not apply to a hazardous waste except that the employer shall ensure the safe use, storage and handling of a hazardous waste generated at that work site through the combination of any mode of identification and worker education.

PROHIBITION

3 (1) An employer shall ensure that a controlled product is not used, stored or handled, at a work site unless the applicable requirements of this regulation in respect of labels, identifiers, material safety data sheets and worker education are complied with.

(2) Notwithstanding subsection (1), an employer may store a controlled product at a work site while actively seeking information required by this regulation.

WORKER EDUCATION

4 (1) An employer shall ensure that a worker who works with a controlled product or in proximity to a controlled product is informed about all hazard information received from a supplier concerning that controlled product as well as any further hazard information of which the employer is aware or ought to be aware concerning that controlled product and its use, storage and handling.

(2) Where a controlled product is produced at a work site, an employer shall ensure that a worker who works with that controlled product or in proximity to that controlled product is informed about all hazard information of which the employer is aware or ought to be aware concerning that controlled product and its use, storage and handling.

5 (1) The employer shall ensure that a worker who works with a controlled product or in proximity to a controlled product is instructed in

(a) the content of the applicable supplier label and work site label, and the purpose and significance of the information contained thereon,

(b) the content required on a material safety data sheet and the purpose and significance of the information contained on the material safety data sheet,

(c) procedures for the safe use, storage, handling and disposal of a controlled product,

(d) specific information needed for the safe use, storage, handling, and disposal of a controlled product contained or transferred in

(i) a pipe,
(ii) a piping system including valves,
(iii) a process vessel,
(iv) a reaction vessel, and
(v) a tank car, tank truck, ore car, conveyor belt or similar conveyance;

(e) procedures to be followed where fugitive emissions are present, and

(f) procedures to be followed in case of an emergency involving a controlled product.

(2) An employer shall ensure that the program of worker education required by subsection (1) is developed and implemented

(a) for that employer's work site and related to the work site's hazard prevention and control program, and

(b) in consultation with the joint health and safety committee, if any.

(3) An employer shall ensure, so far as is reasonably practicable, that the program of worker instruction required by subsection (1) results in a worker being able to apply the information as needed to protect the worker's health and safety.

(4) The employer shall review at least annually, or more frequently if required by a change in work conditions or available hazard information, and in consultation with the joint health and safety committee, if any, the instruction and training provided to workers concerning controlled products.

LABELS

Supplier Label

6 (1) An employer shall ensure that the container of a controlled product or a controlled product received at a work site is labelled with a supplier label.

(2) Subject to section 16, as long as any amount of a controlled product remains in a work site in the container in which it was received from the supplier, an employer shall not remove, deface, modify or alter the supplier label.

(3) Where a label applied to a controlled product or a container of a controlled product becomes illegible or is accidentally removed from the controlled product or the container, the employer shall replace the label with a work site label.

(4) An employer who has received a controlled product in a multi-container shipment where the individual containers have not been labelled by the supplier shall affix to each container a label that meets the requirements of the Controlled Products Regulations.

(5) An employer who has received a controlled product transported as a bulk shipment shall

(a) affix a supplier label to the container of the controlled product or to the controlled product in the work site; or

(b) where, pursuant to section 14 of the Controlled Products Regulations the supplier is not required to label a controlled product transported as a bulk shipment, an employer shall affix a work site label to the container of a controlled product or to the controlled product at the work site.

Work Site Label Produced by an Employer

7 (1) Where an employer produces a controlled product at a work site, the employer shall ensure that the controlled product or the container of the controlled product has applied to it a label that discloses

(a) a product identifier,

(b) information for the safe handling of the controlled product, and

(c) a statement indicating that a material safety data sheet for the controlled product is available.

(2) For the purposes of subsection (1), "produces" does not include the production of a fugitive emission.

(3) Subsection (1) does not apply when the controlled product is in a container that is intended to contain the controlled product for sale or disposition and the container is appropriately labelled or is about to be appropriately labelled.

Work Site Label for Decanted Products

8 (1) Where a controlled product in a work site is in a container other than the container in which it was received from a supplier, the employer shall ensure that the container has applied to it a work site label.

(2) Subsection (1) does not apply to a portable container that is filled directly from a container that has applied to it a supplier label or work site label

(a) if the controlled product

(i) is under the control of and is used exclusively by the employee who filled the portable container,
(ii) is used only during the shift in which the portable container was filled, and
(iii) the content of the container is clearly identified; or

(b) if the controlled product is required for immediate use.

Placard Identifiers

9 Where a controlled product at a work site is contained or transferred in

(a) a pipe,

(b) a piping system including valves,

(c) a process vessel,

(d) a reaction vessel, or

(e) a tank car, tank truck, ore car, conveyor belt or similar conveyance,

the employer shall ensure the safe use, storage and handling of the controlled product through worker education and the use of colour coding, labels, placards or any mode of identification and worker education.

Identification of a Controlled Product Not Contained in a Container

10 Notwithstanding sections 6, 7 and 8, where the controlled product is

(a) not in a container, or

(b) in a container or in a form intended for export,

the employer may fulfill the labelling requirements under sections 6, 7 and 8 by posting a placard which

(a) discloses the information required for a work site label, and

(b) is of such size and in such a location that the information thereon is conspicuous and clearly legible to workers.

Laboratory Labels

11 (1) A label of a container for a controlled product that originates from a laboratory supply house and is packaged in quantities of less than 10 kilograms for each container and that is intended for use in a laboratory shall disclose

(a) a product identifier,

(b) where a material safety data sheet is available, a statement indicating that fact, and

(c) the following information that is applicable to the product

(i) risk phrases,
(ii) precautionary measures, and
(iii) first aid measures.

(2) Notwithstanding section 8, the employer shall ensure that the container of a controlled product to be used exclusively in a laboratory, which is not the container in which the controlled product was received from the supplier, is identified clearly as to its contents.

(3) The employer shall ensure that mixtures and substances undergoing analyses, tests and evaluations in a laboratory are clearly identified.

MATERIAL SAFETY DATA SHEETS

Supplier Material Safety Data Sheets

12 (1) An employer who acquires a controlled product for use at a work site shall obtain a supplier material safety data sheet in respect of that controlled product.

(2) Where a supplier material safety data sheet obtained pursuant to subsection (1) in respect of a controlled product is three years old, the employer shall, if possible, obtain from the supplier an up-to-date supplier material safety data sheet in respect of any of that controlled product at the work site at that time.

(3) Where the employer is unable to obtain a material safety data sheet as required by subsection (2), the employer shall add any new hazard information applicable to that controlled product to the existing supplier material safety data sheet on the basis of the ingredients disclosed in that document.

(4) The employer may provide at a work site a material safety data sheet in a format different from the format provided by the supplier

or containing additional hazard information if the material safety data sheet provided by the employer

(a) subject to section 16, contains no less content than the supplier material safety data sheet, and

(b) the supplier material safety data sheet is available at the work site and the material safety data sheet provided by the employer indicates that fact.

(5) Where a supplier is exempted by Section 9 of the Controlled Products Regulations from the requirement to provide a material safety data sheet for a controlled product, the employer is exempt from the requirement to obtain and provide a material safety data sheet for that controlled product.

Employer Material Safety Data Sheets

13 (1) Where the employer produces a controlled product at the work site, the employer shall prepare a material safety data sheet in respect of that product which discloses, subject to section 16, the information required under the Controlled Product Regulations.

(2) For purposes of subsection (1), "produces" does not include the production of a fugitive emission.

(3) An employer shall update the material safety data sheet referred to in subsection (1)

(a) as soon as practical but not later than 90 days after new hazard information becomes available to the employer, and

(b) at least every three years.

Availability of a Material Safety Data Sheet

14 (1) An employer shall ensure that a copy of a material safety data sheet required by sections 12 or 13 is

(a) made readily available at a work site to workers who may be exposed to the controlled product, and

(b) made readily available to the joint health and safety committee, if any.

(2) Notwithstanding subsection (1), when an employer is required by subsection (1) to make a material safety data sheet readily available, the material safety data sheet may be made available on a computer terminal if the employer

(a) takes all reasonable steps to keep the terminal in active working order,

(b) makes the material safety data sheet readily available on the request of an employee, and

(c) provides training in accessing computer-stored material safety data sheets to

(i) an employee working at a work site where the material safety data sheet is available on a computer terminal, and

(ii) members of the joint health and safety committee.

Deletions From a Material Safety Data Sheet

15 Where an employer claims an exemption from a requirement to disclose information pursuant to section 16, the employer may delete from the material safety data sheet provided in accordance with sections 12 and 13, for the time period prescribed by subsection 16(4), the information that is the subject of the claim but may not delete hazard information.

CONFIDENTIAL BUSINESS INFORMATION

16 (1) An employer who is required pursuant to this regulation to disclose on a label or a material safety data sheet

(a) the chemical identity or concentration of any ingredient of a controlled product,

(b) the name of any toxicological study that identifies any ingredient of a controlled product,

(c) the chemical name, common name, generic name, trade name or brand name of a controlled product, or

(d) information that could be used to identify a supplier of a controlled product

may, if the employer considers such information to be confidential business information, claim an exemption from the requirement to disclose that information.

(2) The claim under subsection (1), shall be made to the Commission established under the Hazardous Materials Information Review Act and shall be filed in accordance with the procedure established under that Act and the regulations made thereunder.

(3) Pursuant to section 32 of the Hazardous Materials Information Review Act, the Commission shall exercise the powers and perform the functions specified in that Act and the procedures prescribed by the Hazardous Materials Information Review Regulations in respect of the claim made under subsection (1).

(4) Information that an employer considers to be confidential business information is exempt from disclosure from the time a claim is filed under subsection (1) until the claim is finally determined by the Commission and for a period of three years thereafter if the claim is found to be valid.

(5) An employer who makes a claim under subsection (1) shall abide by decisions of the Commission and orders of the Commission.

(6) Appeals of decisions made by the Commission shall lie exclusively with the procedures established under the Hazardous Materials Information Review Act.

CONFIDENTIALITY OF INFORMATION

17 (1) Where an officer obtains information from the Commission under paragraph 46(2)(e) of the Hazardous Materials Information Review Act, the officer to whom such information is communicated shall keep such information confidential and shall not disclose such information to any person except for the purposes of the administration or enforcement of the Act.

(2) Any person to whom information is disclosed pursuant to subsection (1) shall keep the information confidential.

Disclosure of Information in Medical Emergencies

18 (1) An employer shall, in respect of any controlled product present or which was present at the work site, provide such information respecting the controlled product, including confidential business information, as is in the possession of the employer, to a medical professional who requests information on the controlled product for the purpose of making a medical diagnosis of, or rendering medical treatment to, a person in an emergency.

(2) No person to whom information is provided by an employer pursuant to subsection (1) shall communicate or disclose the information to any other person except as may be necessary for the purposes mentioned in that subsection.

(3) Any person to whom information is disclosed under subsection (2) shall keep the information confidential.

19 No person shall use, disclose or release information protected as confidential business information under this regulation except as provided by sections 17 and 18.

Transition Period

20 (1) This regulation shall come into force on October 31, 1988.

(2) A controlled product received at a work site before October 31, 1988

(a) shall bear a work site label, and

(b) is exempt for one year from October 31, 1988 from the provisions of these Regulations respecting supplier labels.

(3) A controlled product received at a work site before October 31, 1988 is exempt for a period of 90 days from October 31, 1988 from the provisions of these regulations respecting supplier material safety data sheets

(a) if the employer is actively seeking a supplier material safety data sheet for the controlled product, or

(b) if a supplier material safety data sheet is not available, the employer is developing a material safety data sheet containing no less information than that required for a supplier material safety data sheet.